IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE SEVENTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 20783 of 2004

Between:

D.V.S.Bullebbai, S/o.Ammi Raju,
R/o.Flat No.B-1, Bharathi Bahvan Apartment,
Near Siababa Temple, Vijayawada, Krishan District-520008.

..... PETITIONER

AND

1 APSRTC, Musheerabad, Hyderabad rep.by its Managing Director.
2 The Depot Manager, APSRTC, Governorpet-I Bus Depot, Governorpet, Vijayawada,
Krishna District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ or direction particularly one in the nature of writ of certiorari, and quash impugned proc.No.ST/95 (103)/04-GVPT-I, dt.04-11-2004 served on 08-11-2004 as illegal, unjust, in violation of Art. 14, 16 & 21 of the Constitution of India and consequently direct the respondents to reinstate the petitioner into service with all consequential benefits in the interest of justice and fair play.

Counsel for the Petitioner:MR.V.NARASIMHA GOUD

Counsel for the Respondent Nos.1&2.: MR.R.MANMADHA REDDY, STANDING COUNSEL

The Court made the following :

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ORDER:

This writ petition is filed to issue a writ of Mandamus challenging the impugned proceedings No.ST/95 (103)/04-GVPT-I, dated 04.11.2004, passed by the 2nd respondent as illegal, unjust.

It is the case of the petitioner that while he was conducting the bus on 31.05.2004, a check was effected and found one passenger without ticket. Therefore, a memo was issued on 31.5.2004 for which the petitioner gave his explanation. Subsequently, the respondents served another memo alleging that the petitioner has not collected fare from a passenger and not issued ticket to the passenger and further alleged that the petitioner tried to swallow the tickets, for which the petitioner gave an explanation. Having not satisfied with the explanation, an enquiry was conducted. Thereupon, a show cause notice was issued to the petitioner and the impugned proceedings have been passed removing him from service. Challenging the same, the present writ petition is filed.

The learned counsel appearing for the petitioner contended that the punishment is disproportionate to the alleged misconduct and he also further contended that there is clearly arbitrary action on the part of the disciplinary authority inasmuch as a clear finding has been given by the enquiry officer that the petitioner has not swallowed the tickets and imposing the punishment contrary to the evidence of the enquiry officer is vitiated and therefore, he prays to quash the proceedings.

The learned counsel appearing for the petitioner relied upon certain decisions. The jurisdiction of the Depot Manager who passed the impugned proceedings is not under challenge. Admittedly, an appeal lies to the Divisional Manager within two months from the date of receipt of the copy of the impugned proceedings.

The learned counsel appearing for the petitioner placed strong reliance on the decision reported in A.P.State Road Transport Corporation, Hyderabad Vs.K.L.Sudhakar wherein it is held that *"Even availability of alternative remedy of raising an industrial dispute cannot be a bar in entertaining writ petition"*

There cannot be any dispute about the proposition of law laid down by this Court. This Court can interfere and an alternative remedy is not a bar for exercising the jurisdiction of this Court under Article 226 of the Constitution of India when findings are perverse or the findings are not based on any evidence on record. In so far as charge No.1 is concerned, a categorical finding has been given – the conductor has failed to collect requisite fare of Rs.3/- from a passenger who boarded your bus at Krishnaveni Motor and bound for City Terminal Ex-stages 3 to 1, while performing duty on route No.226 on 31.5.2004, as per the evidence available and held responsible for the charge. Insofar as charge No.2 is concerned, the enquiry officer observed that it is doubtful that the petitioner-conductor has put the contents of the bag in his mouth. But however, the enquiry officer has observed that as there was no need for the TTI to frame false case against the conductor, charge No.2 levelled against the conductor is proved.

Whether the punishment is disproportionate to the alleged misconduct of the writ petitioner or whether the findings are not based upon evidence, or whether the passenger has not taken the ticket from the conductor or whether wantonly or negligently the conductor did not issue the tickets are pure questions of fact which are required to be appreciated by the appellate authority. Since the jurisdiction of the disciplinary authority is not under challenge, I deem it appropriate to direct the

petitioner to file an appeal before the statutory authority i.e. Divisional Manager and thereafter the same shall have to be considered in accordance with law, duly taking into consideration the enquiry report and also whether the findings are based upon any evidence or not. So also the appellate authority shall take into consideration the quantum of punishment, to be imposed, basing on the alleged misconduct.

With the above observation, the writ petition is disposed of. No costs.

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07.12.2004

bsv

To

1. The Managing Director, APSRTC, Musheerabad, Hyderabad
2. The Depot Manager, APSRTC, Governorpet-I Bus Depot, Governorpet, Vijayawada, Krishna District.

3. 2CD copies